

ORIGINAL

PROB 12B
(7/93)

United States District Court

for the

DISTRICT OF HAWAII

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

FEB 27 2008

at 2 o'clock and 15 min. 2 M.
SUE JENTIA, CLERK

**Request for Modifying the Conditions or Term of Supervision
with Consent of the Offender**

(Probation Form 49, Waiver of Hearing is Attached)

Name of Offender: EDUARDO DIAZ aka "Ghetto" Case Number: CR 03-00454SOM-01

Name of Sentencing Judicial Officer: The Honorable Susan Oki Mollway
U.S. District Judge

Date of Original Sentence: 9/27/2004

Original Offense: Conspiracy to Possess With Intent to Distribute 5 Grams or More of
Methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and 846,
a Class B felony

Original Sentence: Fifty-seven (57) months imprisonment, to be followed by four (4)
years supervised release with the following special conditions:
1) That the defendant participate in a substance abuse program,
which may include drug testing at the discretion and direction of the
Probation Office; 2) That the defendant provide the Probation
Office access to any requested financial information; and 3) That
the defendant shall submit his person, residence, place of
employment, or vehicle to a search conducted by the U.S.
Probation Office at a reasonable time and in a reasonable manner,
based upon reasonable suspicion of contraband or evidence of a
violation of a condition of supervision. Failure to submit to a search
may be grounds for revocation. The defendant shall warn any
other resident that the premises may be subject to search pursuant
to this condition.

Type of Supervision: Supervised Release Date Supervision Commenced: 1/24/2008

PETITIONING THE COURT

[X] To modify the conditions of supervision as follows:

*General Condition: That the defendant shall refrain from any unlawful use of a
controlled substance. The defendant shall submit to one
drug test within 15 days of the commencement of*

supervision and at least two drug tests thereafter but no more than eight valid drug tests per month during the term of supervision, unless there is a positive drug test, in which event the maximum shall increase to up to one valid drug test per day.

Special Condition No. 1: That the defendant shall participate and comply with substance abuse treatment which includes drug and alcohol testing, in a program approved by the Probation Office. The defendant is to refrain from the possession and/or use of alcohol while participating in substance abuse treatment.

CAUSE

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1. Standard Condition No. 7 and Special Condition No. 1	The offender's urine specimen taken as part of the treatment regimen submitted on 2/14/2008 tested positive for hydrocodone.

Per the special condition, the offender was referred to Freedom Recovery Services (FRS) for substance abuse counseling and random drug testing. As part of the treatment regimen, the offender submitted a urine specimen for testing at FRS on 2/14/2008. The specimen was tested using a non-instrumented drug testing device (NIDTD) and found to be presumptively positive for opiates. The specimen was forwarded to a laboratory and confirmed positive for hydrocodone.

The offender admitted that on 2/13/2008, he was suffering from tooth pain and ended up taking several pills prescribed to his wife for pain. Specifically, the pills were Vicodin that were prescribed to his wife after she had her wisdom teeth removed in January 2008. Vicodin produces a positive drug test result for hydrocodone. The offender acknowledged that he had been instructed by this officer during his initial processing for supervision that he was not to take medication unless it was prescribed to him by a physician. The offender was admonished and warned to not take unprescribed narcotic medication.

According to our records, the offender does not have a history of prescription medication abuse. This appears to have been an isolated incident stemming from dental problems. As soon as the offender's dental insurance begins with his employer, he has promised to have his dental needs addressed.

Considering the above-noted incident and his history of illicit drug use, and in light of U.S. vs. Stephens, we are requesting that the Court modify the mandatory drug testing condition (General Condition) to allow for additional drug testing. We are also

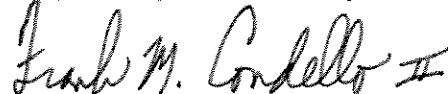
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requesting that Special Condition No. 1 be revised to include updated language. Our office believes that it is prudent to randomly test the offender for illicit drug use until the expiration of supervision.

As noted by his signature on the attached Waiver of Hearing form (Probation Form 49), the offender maintains no objections to this recommendation. The offender's attorney and the U.S. Attorney's Office have been notified of the proposed modifications.

Respectfully submitted by,



FRANK M. CONDELLO, II
U.S. Probation Officer

Approved by:

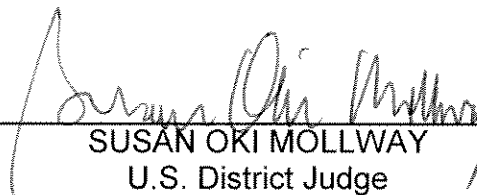


GENE DeMELLO, JR.
Supervising U.S. Probation Officer

Date: 2/25/2008

THE COURT ORDERS:

- ☒ [X] The Modification of Conditions as Noted Above
☐ [] Other


SUSAN OKI MOLLWAY
U.S. District Judge

FEB 26 2008

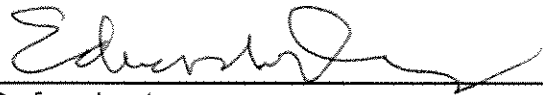
Date

NOTICE REGARDING MODIFICATION OF CONDITIONS

The defendant understands that any modification of court-ordered conditions is not a waiver of those conditions or of any consequence of violating those conditions. Violations that have preceded this or any modification of conditions may be considered by the court as a basis for revoking supervised release or probation, especially, but not only, in the event of a future violation, whether any such future violation is similar to or different from any preceding violation.

The absence of this notice does not confer, and should not be interpreted by the defendant as conferring, any rights on the defendant. The absence of this notice does not indicate, and should not be interpreted by the defendant as indicating, any position by the court or by the defendant. Even in the absence of this notice, supervised release or probation may, in the future, be revoked based on violations occurring before this or any other modification of conditions.

Agreed to and acknowledged:


Defendant

Print Name: Eduardo Díaz

Date: 1-28-08

United States District Court

District of Hawaii

Waiver of Hearing to Modify Conditions of Probation/Supervised Release and/or Extend Term of Supervision

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release and/or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release and/or to the proposed extension of my term of supervision:

[X] To modify the conditions of supervision as follows:

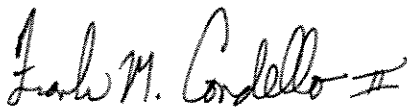
General Condition:

That the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of the commencement of supervision and at least two drug tests thereafter but no more than eight valid drug tests per month during the term of supervision, unless there is a positive drug test, in which event the maximum shall increase to up to one valid drug test per day.

Special Condition No. 1:

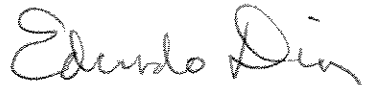
That the defendant shall participate and comply with substance abuse treatment which includes drug and alcohol testing, in a program approved by the Probation Office. The defendant is to refrain from the possession and/or use of alcohol while participating in substance abuse treatment.

Witness:



FRANK M. CONDELLO, II
U.S. Probation Officer

Signed:



EDUARDO DIAZ
Supervised Releasee

1-28-08

Date